

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF WASHINGTON &)	
IDAHO RAILWAY SPECIAL REGULATORY)	CASE NO. WAI-R-15-01
FEE PURSUANT TO <i>IDAHO CODE</i> §§ 61-)	
1001 THROUGH 61-1005)	CONSENT AGREEMENT &
)	ORDER
)	

In the interest of a speedy and judicious settlement of the above-captioned matter, consistent with the public interest, statutory requirements and responsibilities of the Idaho Public Utilities Commission ("Commission"), the Staff of the Idaho Public Utilities Commission ("Staff"), and the Washington & Idaho Railway ("WAI") enter into the following Consent Agreement ("Agreement") as the final disposition of this matter upon the following terms:

RECITALS

1. WAI is regional rail shipper headquartered in Rosalia, Washington, and operates in portions of Washington, Idaho, and Montana. The Railroad is a "railroad corporation," and a "common carrier" as defined by *Idaho Code* §§ 61-110, 61-111, 61-113 and 61-129. As such, the Railroad is a public utility subject to the jurisdiction of the Commission.
2. WAI has read and understands the terms of this Agreement, and voluntarily enters into this Agreement voluntarily and not under coercion or duress. WAI acknowledges that it has had the opportunity to consult with an attorney in this matter.
3. WAI understands that it has the right to a hearing concerning the above-captioned matter at which WAI could present evidence and cross-examine witnesses. By entering into this Consent Agreement, WAI knowingly and voluntarily relinquishes all rights to such a hearing, as well as any rights of appeal.
4. WAI understands that this Agreement or any part of the Agreement may be considered in any potential future disciplinary action in front of the Commission.
5. WAI understands that acceptance of this Agreement does not preclude any other agency, subdivision, or officer of this State from commencing a separate administrative, civil, or criminal action relating to conduct recited in this Agreement.
6. WAI understands that this Agreement deals with Case No. WAI-R-15-01 involving allegations that WAI failed to file annual returns of its gross intrastate revenues in Idaho, and failed to

pay annual regulatory fees to the Commission as required by *Idaho Code* §§ 61-1001-05. All admissions made by WAI in this Agreement are made solely for the final disposition of this matter.

7. WAI acknowledges and agrees that, upon execution of this Agreement, it may not revoke its acceptance, or make any modifications to the Agreement.

8. WAI understands that the Agreement is a public record that may be publicly disseminated as a formal action of the Commission, and shall be reported as otherwise required by Idaho law.

STIPULATED FACTS AND LAW

9. *Idaho Code* § 61-1003 requires that, “[o]n or before April 1st of each year, each public utility and railroad corporation subject to the jurisdiction of the commission, shall file with the commission a return verified by an officer or agent of the public utility or railroad corporation involved, showing its gross operating revenues from its intrastate utility or railroad business in Idaho for the preceding calendar year during which it carried on such intrastate utility or railroad business.”

10. *Idaho Code* § 61-1001 requires that “[e]ach railroad corporation, subject to the jurisdiction of the commission, and subject to the provisions of this act, shall pay to the commission in each year, a special regulatory fee in such amount as the commission shall find and determine to be necessary, together with the amount of all other fees paid or payable to the commission by each such public utility and railroad corporation” *See also Idaho Code* § 61-1005.

11. Once a railroad has reported its intrastate operating revenues for the previous calendar year, the Commission calculates the “proportional assessment that all railroad corporations . . . shall bear . . . in proportion to their respective gross operating revenues derived from intrastate [railroad] business in Idaho for the preceding calendar year” *Idaho Code* § 61-1004. The Commission then notifies each railroad of its assessed regulatory fee no later than May 1 of each year. *Idaho Code* § 61-1005. The regulatory fee may be paid to the Commission in equal semi-annual installments due May 15 and November 15 of each year. *Id.*

12. Commission Staff has alleged, and WAI acknowledges, that WAI failed to timely file its annual revenue statements for calendar years 2013 and 2015. Staff has further alleged, and WAI acknowledges, that WAI failed to pay its assessed regulatory fees for calendar years 2012, 2013, 2014, and 2015.

13. WAI's failure to file its statutorily required annual verified return in 2013 and in 2015 violates *Idaho Code* § 61-1003, with each "failure to file" creating a distinct and unique cause of action. *See Idaho Code* § 61-707 (every violation "shall be deemed a separate and distinct offense").

14. WAI's failure to pay its statutorily required annual regulatory fees to the Commission for years 2012, 2013, 2014, and 2015 violates *Idaho Code* § 61-1005, with each "failure to pay" creating a distinct and unique cause of action. *See Idaho Code* § 61-707 (every violation "shall be deemed a separate and distinct offense").

15. On June 29, 2015, the Commission issued and served an Order to Show Cause on WAI requiring that it show cause why it has failed to comply with Commission revenue reporting requirements and why it has failed to pay its statutory regulatory fees. The Order required that WAI appear before the Commission on July 21, 2015. WAI failed to appear at that hearing.

16. Prior to the show cause hearing, on July 20, 2015, WAI filed with the Commission its 2013 and 2015 revenue statements. With those statements, Commission Staff was able to calculate that proper fee WAI owed the Commission.¹

17. In summary, WAI failed to pay its regulatory fee of \$947.31 in 2012; failed to pay its regulatory fee of \$1,072.48 in 2013; failed to pay its regulatory fee of \$776.41 in 2014; and failed to pay even half of its 2015 regulatory fee of \$592.18. Further, as a result of failing to pay, WAI has incurred interest in the amount of \$231.20. Accordingly, WAI is currently \$3,619.58 in arrears to the Commission.

18. *Idaho Code* § 61-706 authorizes the imposition of a civil penalty of \$2,000 on any public utility that fails to comply with Idaho's public utilities laws.

¹ Previously, Staff alleged that WAI failed or refused to pay a regulatory fee of \$50 in 2013, and \$50 in 2015. However, \$50 represents a statutory minimum because Commission staff had been unable to calculate an accurate amount due to the Company's failure to submit annual verified returns. *See Idaho Code* 61-1004

SANCTIONS

19. Based upon the foregoing facts, WAI and Commission Staff agree as follows:
 - a. WAI shall pay the Commission all outstanding fees and interest, totaling \$3,619.58 by Friday, July 24, 2015;
 - b. WAI shall submit to a financial records audit by Commission Staff no later than December 31, 2015;
 - c. WAI shall pay a civil penalty of \$12,000, with \$2,000 payable by October 1, 2015, and \$10,000 withheld, contingent upon the following:
 - i. WAI shall file its 2016 annual revenue statement, as described in *Idaho Code* § 61-1003, on or before April 1, 2016; and
 - ii. WAI shall pay its full 2016 annual assessment, as described in *Idaho Code* § 61-1005, on or before May 15, 2016.
20. If WAI fails to timely file its 2016 revenue statement, fails to timely pay its 2016 assessment, or otherwise violates this Agreement, WAI consents to the imposition of the withheld \$10,000 civil penalty.

APPROVAL OF AGREEMENT

21. WAI understands that this Agreement shall not become effective unless and until it is adopted by the Commission.
22. Once this Agreement is fully executed, the Staff's attorney shall present the Agreement to the Commission with a recommendation for approval.
23. The Commission may accept, modify with WAI's approval, or reject this Agreement. If the Agreement is rejected, prosecution of this matter will continue and any stipulated facts shall be regarded as null and void.
24. This Agreement is entire agreement between the parties, and WAI is not relying on any other agreement or representation of any kind, verbal or otherwise.

I have fully read the above Agreement and have had the opportunity to discuss it with legal counsel. I understand that by its terms I am waiving certain rights accorded me under Idaho law. I understand that the Commission may approve the Agreement as proposed, approve it subject to specified changes, or reject it. I

understand that, if approved as proposed, the Commission will adopt this Agreement by Order according to the aforementioned terms, and I agree to adhere to those terms.

DATED this 24 day of July, 2015.

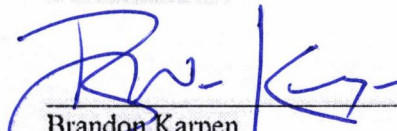
WASHINGTON & IDAHO RAILWAY


Dan DeGon, General Manager

I recommend that the Commission enter an Order adopting this Agreement.

DATED this 24th day of July, 2015.

STAFF of the IDAHO PUBLIC UTILITIES
COMMISSION


Brandon Karpen
Deputy Attorney General

ORDER

The Commission finds the foregoing Consent Agreement just and reasonable, and in conformance with Commission Rule 58, which states that "consent agreements are intended to require compliance with existing law." Thus, we find it appropriate to adopt this Agreement as the decision of the Commission.

Accordingly, IT IS HEREBY ORDERED that Washington and Idaho Railway comply with the provision of this Consent Agreement as set forth above.

This is a FINAL ORDER adopting a consent agreement.

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this day
of , 2015.

PAUL KJELLANDER, PRESIDENT

KRISTINE RAPER, COMMISSIONER

ATTEST:

Jean D. Jewell
Commission Secretary